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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 432

S. T. PERSEN as Ancillary Administrator *de bonis non* with the will annexed of Washington Gray, deceased,
Petitioner,

—against—

THE NATIONAL CITY COMPANY, a corporation, also known as The City Company of New York, Incorporated, a corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

WILBER W. CHAMBERS,
Counsel for Petitioner,
No. 420 Lexington Avenue,
New York, N. Y.

FRANK H. TWYEFFORT,
WARREN C. DUBOIS,
Of Counsel.

THE COURT PRESS, N. Y. C.

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—against—

THE NATIONAL CITY COMPANY, a corporation, also known as The City Company of New York, Incorporated, a corporation,

Respondent.

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioner, S. T. Persen as Ancillary Administrator de bonis non with the will annexed of Washington Gray, deceased, respectfully prays that a Writ of *Certiorari* issue to review the judgment of the United States Circuit Court of Appeals for the Second Circuit reversing a judgment of the United States District Court for the Southern District of New York, entered March 16, 1942, in favor of the plaintiff (petitioner) and against the defendant (respondent) for the sum of $32,293.99.

All references are to page numbers in the Printed Record.

Opinions Below.

The opinion of the District Court (R. 225, 229) is not reported.

No opinion of the Circuit Court of Appeals was rendered, save as follows:

> "Per Curiam. Reversed on authority of *Robbins* v. *Pacific Eastern Steamship Company*, 8 Cal. (2d) 241, and complaint dismissed."

The decision of the Circuit Court of Appeals was rendered on July 6th, 1942, and the decree and order for the mandate thereon was entered July 28th, 1942.

Jurisdiction.

The Jurisdiction of this Court to review the decision of the Circuit Court of Appeals is invoked under Section 240 (a) of the Judicial Code, as amended (U. S. Code, Title 28, Section 347).

Question Presented.

Whether a purchaser in California of securities whose sale is subject to the Corporate Securities Act of that state is deprived of the protection of such Act because the purchaser, on paying the seller in California the purchase price, directs the seller to send the securities to seller's New York office for purchaser's safekeeping account, *i. e.* does such a direction (and its effectuation) constitute such a "delivery" of the securities outside California as to exempt the sale from such Act?

Statement.

The suit is to recover the purchase price of 50 shares of the capital stock of The National City Bank of New York and of The National City Company, or beneficial interest therein, under a sale of them made conjointly, *i. e.* the stock and beneficial interests in both corporations were printed on single certificates and were, by pre-existing agreement, linked together for public sale, holding and transfer in such manner as to require any purchaser of one necessarily to purchase the other. Under the California Corporate Securities Act (L. 1917, c. 532; R. 129, *et seq.*), the stock or beneficial interest therein of The National City Company of New York should have been registered in California for sale, but was not; and such a sale of an unregistered security is illegal and invalid. In making the sale The National City Company of New York used as its agent The National City Company of California, solely controlled by the New York Company, which owned all the stock of the California company (R. 95), with Charles E. Mitchell, the head of the New York company, as a director of the California company (R. 156). The purchaser, Washington Gray, was in California on a visit when he bought the securities there. He made there payment of the purchase price (R. 105). The notice of confirmation of sale was executed and delivered to him in California with advice that "disposition will be made in accordance with your instructions" (R. 104). Accordingly, Gray, in making payment in California, directed that the same be "delivered to *your New York office* for my account for safe keeping" (R. 105; emphasis supplied) and confirmed this direction on a form of the seller, when he filled in the blank, after the printed clause reading: "When certificates are ready, kindly forward to", with the words "National City Com-

pany (*Head Office*), New York City, for safe keeping & subject to my order" (R. 106; emphasis supplied). The plaintiff was appointed administrator d.b.n. c.t.a. of Gray after the latter's estate had been administered by his executor and this claim was discovered. The Circuit Court of Appeals reversed the verdict in the District Court for plaintiff and dismissed the complaint solely "on authority of *Robbins* v. *Pacific Eastern Steamship Company*, 8 Cal. (2d) 241".

Specification of Error to Be Urged.

The Circuit Court of Appeals erred in not holding in accordance with the prevailing law of California that the sale in question was completed in that State and was subject to the Corporate Securities Act.

Reasons for Granting the Writ.

The prevailing law of California is contrary to the force ascribed by the Circuit Court of Appeals to the decision of the California court in the *Robbins* case. The opinion in that case is 45 pages long and the ground of decision ascribed by the Circuit Court of Appeals to the California court does not appear from the opinion to have been the real basis of the California court's decision. The Corporate Securities Act of California was enacted as a Blue Sky law to protect investors. If all that is necessary in order to emasculate the Act in any and every case to which it was intended to and should apply is to mail the securities sold in California in violation of law across the borders of the state for safekeeping, the Act might as well never have been enacted. Other decisions of California courts, which petitioner claims show that the prevailing view of the California courts is to support and

not annihilate the Corporate Securities Act of that State, are set forth in petitioner's appended brief in support of this petition. The effectiveness of the Act is of public importance and this Court has often granted certiorari to review decisions of circuit courts of appeals which appear to be in conflict with applicable state court decisions. *City Company of New York, Inc.* v. *Stern,* 312 U. S. 666; *Chase Securities Corp.* v. *Vogel,* 312 U. S. 666; *Vanderbark* v. *Owens-Illinois Glass Co.,* 311 U. S. 538; *West, et al.* v. *American Telephone and Telegraph Co.,* 311 U. S. 223; *Fidelity Union Trust Co.* v. *Field,* 311 U. S. 169; *Six Companies* v. *Highway Dist.,* 311 U. S. 180.

WHEREFORE, your Petitioner respectfully requests that a writ of certiorari should be granted as prayed.

Dated: September 25, 1942.

S. T. PERSEN
Ancillary Administrator de bonis non with the will annexed of Washington Gray, deceased,
Petitioner.

by WILBER W. CHAMBERS,
Counsel for Petitioner.

FRANK H. TWYEFFORT,
WARREN C. DUBOIS,
Of Counsel.